



Competitive Carriers Association
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November 21, 2014

Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: EX PARTE NOTICE

Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265

Dear Ms. Dortch:

On Wednesday, November 19, 2014, Steven K. Berry and I on behalf of the Competitive Carriers Association (“CCA”), along with Erin Fitzgerald on behalf of the Rural Wireless Association, Inc. (“RWA”), Donald Evans on behalf of NTCH, Flat Wireless and Buffalo- Lake Erie Wireless, Michael Lazarus of Telecommunications Law Professionals PLLC on behalf of NTELOS Wireless, Ben Moncrief for C Spire, John Bergmayer for Public Knowledge, Luisa Lancetti and Josh Roland for T-Mobile USA, Inc., Hadass Kogan on behalf of DISH Network Corporation, Mary Albert for COMPTel, Jill Canfield of NTCA-the Rural Broadband Association (“NTCA”), Cathy Sloan on behalf of Computer and Communications Industry Association (“CCIA”), and John Prendergast on behalf of the Blooston Rural Carriers (collectively, the “T-Mobile Petition Supporters”), met with Roger Sherman, Garnet Hanley, Michael Janson, Jim Schlichting, Gloria Sheu, Joel Taubenblatt, Catherine Matraves, and Brenda Boykin to discuss the above captioned matter.

The T-Mobile Petition Supporters represent a broad coalition of support for guidance regarding the “commercially reasonable” standard set forth by the Commission in the Data Roaming Order.¹ Specifically, the companies, associations and organizations that make up the T-Mobile Petition Supporters urge the Commission to grant T-Mobile’s Expedited Petition for Declaratory Ruling² that the Commission provide additional clarity for determining whether a proffered data roaming rate is “commercially reasonable” under the Commission’s rules. Each entity represented by the T-Mobile Petition Supporters agrees that the data roaming market is broken, and that a grant of the T-Mobile Petition would vastly improve the data roaming market, which in turn would help allow carriers to provide competitive services to consumers. While some of us have requested individual relief, through

¹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 (2011) (“Data Roaming Order”).

² Petition for Expedited Declaratory Ruling of T-Mobile, USA, Inc., WT Docket No 05-265 (filed May 27, 2014) (“T-Mobile Petition”). DISH is generally supportive of the T-Mobile Petition, but takes no position on the specific arguments addressed herein.

comments, formal complaints and long pending petitions, the T-Mobile Petition Supporters agree the limited guidance sought in the T-Mobile Petition will provide necessary clarity for individualized negotiations and help all parties, including AT&T and Verizon, better evaluate the commercial reasonableness of offered terms.³ With the FCC's recent delay of the incentive auction, continued, significant increases in consumer wireless data consumption, AT&T and Verizon's announcement of their VoLTE interoperability agreement, and as carriers begin to roll-out LTE, it is critical the FCC act now to provide much needed guidance to foster a more competitive data roaming market.

The T-Mobile Petition Supporters discussed AT&T⁴ and Verizon's⁵ spurious claims during the meeting, as set forth below. In particular, the T-Mobile Petition Supporters addressed the claims that AT&T is a net purchaser of data roaming costs, that grant of the T-Mobile Petition will discourage network build-out, and that T-Mobile's request cannot be addressed through a declaratory ruling. AT&T and Verizon's inaccurate arguments will not facilitate roaming negotiations, and will only further delay providing commercially reasonable roaming to its competitors. Rather, the overwhelming support in the record of this proceeding for the T-Mobile Petition should compel the Commission to grant the T-Mobile Petition expeditiously.

First, it should be of no consequence that AT&T claims that it is a "net payor" of roaming expense, *i.e.*, "that it buys more data roaming than it sells both on a megabyte and on a dollar basis."⁶ Assuming this is true, it is difficult to determine why AT&T would oppose an action that could save it money. AT&T inexplicably using this claim as support for opposing the T-Mobile Petition should give the Commission pause. Notwithstanding, the T-Mobile Petition Supporters noted that AT&T appears to draw a distinction between "arms-length" roaming agreements and "strategic" roaming agreements to make its assertion. However, AT&T does not provide any information or data to support these claims, so there is no record-based way to determine the veracity of these assertions.

Nevertheless, even if AT&T is a "net payor," that does not diminish the need for a grant of the T-Mobile Petition. Without much insight as to AT&T's calculations, there are a number of reasons why AT&T may be a net payor that would not negate the need for Commission action. For example, AT&T and Verizon collectively have exponentially more customers who roam on other carriers' networks, with over 200+ million people roaming, as opposed to the much smaller numbers of roaming subscribers represented by each carrier of the T-Mobile Petition Supporters. Moreover, AT&T and Verizon have greater smartphone penetration than other carriers and therefore their customers generate more minutes or megabytes on other carriers' networks. Lastly, as demonstrated in the record, both AT&T and Verizon have been notorious for withholding the sale of roaming at commercially reasonable rates to other carriers, which artificially lowers the amount of roaming that takes place on the AT&T and Verizon networks.

Furthermore, regardless of whether AT&T and Verizon are net payors for roaming, they most likely pay a significantly smaller proportion of their overall revenues for roaming costs when compared

³ To be clear, the T-Mobile Petition Supporters are not seeking a regulation of rates, and a grant of the T-Mobile Petition would not involve the regulation of rates or other rule making. Rather, the benchmarks set forth in the T-Mobile Petition will help to both facilitate the negotiation of roaming agreements, and clarify the rules of the game for carriers to make informed decisions regarding the potential filing of complaints.

⁴ Letter from Joan Marsh, AT&T, to Marlene H. Dortch, Secretary, FCC, in WT Docket N0. 05-265, November 11, 2014 ("AT&T *Ex Parte*").

⁵ Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, in WT Docket N0. 05-265, November 17, 2014 ("Verizon *Ex Parte*").

⁶ AT&T *Ex Parte* at 2.

to competitive providers. Indeed, such net payor claims do not provide a full picture of the competitive impact roaming has on the wireless market and on smaller providers', particularly the smallest rural carriers', ability to compete. A more suitable metric would be AT&T and Verizon's roaming expenses as a percentage of overall revenues as compared to competitive providers to fully understand the market dynamics at work. The T-Mobile Petition Supporters noted that AT&T and Verizon's roaming expenses are likely a considerably smaller portion of AT&T and Verizon's costs than what each of the T-Mobile Petition Supporters pay.

More importantly, the Commission must consider any "foreclosure value" that AT&T and Verizon may place in maintaining artificially high reciprocal roaming rates, as a means of dampening competition in a particular market. Such ancillary value could explain why AT&T would not support lower roaming rates even if it is a net payor. Assuming high-rate, reciprocal roaming is occurring, AT&T and Verizon are essentially allowed to keep rivals' retail prices high, which in turn prevents rivals from acting as a competitive check against AT&T and Verizon. Because AT&T and Verizon hold a dominant subscriber market share, they each reap an increased revenue stream from artificially-inflated retail rates. This may be the most meaningful reason for the Commission to grant the T-Mobile Petition; AT&T and Verizon benefit from high roaming rates in the marketplace for strategic reasons that have nothing to do with a well-functioning roaming marketplace.

In short, there are many reasons why AT&T and/or Verizon may be net payors of roaming, but, in the final analysis, this assertion (even if true), alone should not preclude a grant of the T-Mobile Petition.

Both AT&T and Verizon further claim that because rates for data roaming are on a downward trend, the relief sought in the T-Mobile Petition is unnecessary.⁷ While data roaming rates may be on a downward trend, this trend does not mean that the rates now being offered by AT&T and Verizon are at commercially reasonable levels. Indeed, as carriers have become more efficient in the provision of their services, coupled with the transition to 4G LTE, which allows for as much as five times more efficiency than prior offerings, one would expect rates to decrease somewhat over the years. However, the T-Mobile Petition Supporters noted that just because prices may be on a downward trend does not mean that they have reached a point that represents a well-functioning data roaming market. Even AT&T's plain old telephone service prices decreased at times when it was a monopoly provider as a result of lowering costs. Even monopoly providers are incented to lower prices to broaden their subscriber bases. In this case, AT&T and Verizon are the duopoly gatekeepers for many providers to obtain nationwide roaming, and they have continued to offer roaming rates that are completely disconnected from the costs of providing such service; with such rates remaining commercially unreasonable.

AT&T and Verizon also contend that granting the T-Mobile Petition would discourage network build-out by other carriers.⁸ This has been an oft-repeated refrain from AT&T and Verizon, despite the fact that both carriers continue to invest in network infrastructure at high rates. This refrain is also a fallacy; in fact, the opposite is true. While AT&T and Verizon's proposed standard results in the opposite of its desired effect, lower roaming rates will allow competitive providers to allocate more capital and operating expenses for network builds and upgrades in unserved and underserved areas.⁹ It is not roaming that discourages network build-out; it is high roaming rates being charged to carriers that discourages network build-out, as carriers are forced to choose between paying high roaming rates to

⁷ AT&T *Ex Parte* at 2; Verizon *Ex Parte* at 1.

⁸ AT&T *Ex Parte* at 2; Verizon *Ex Parte* at 2-3.

⁹ The Commission can also encourage build-out through other means, such as increased universal service support for high-speed mobile broadband.

provide a competitive nationwide service, or using those funds to upgrade their own service in existing areas. This is not a choice that competitive carriers would have to make in a competitive, transparent data roaming market. Commercially unreasonable roaming rates and terms also could jeopardize providers' ability to meet on-going universal service requirements, which would foreclose a potential source of funding for rural networks. In addition, the FCC can (and should) encourage build-out through other means, such as increased USF support for high-speed mobile broadband and strong build-out requirements.

Frankly, the build-out standard that AT&T and Verizon proffer is absurd. The carriers that make up the T-Mobile Petition Supporters want to have the ability to provide competitive services to consumers, and have been active in expanding coverage within their own areas. Indeed, it is actually more cost effective to serve customers over a carrier's own facilities rather than having customers roam on another carrier's facilities. However, AT&T and Verizon's proposed standard would require all providers to build out networks nationally before the Commission's data roaming rules would become effective. Even when carriers want to expand their networks, reduction in much needed wireless universal service support, the delay of the incentive auction, and the difficulty of anyone other than AT&T and Verizon to acquire spectrum on the secondary market, makes acquiring spectrum for building, operating and maintaining networks in high-cost areas in the near-term difficult.

All consumers, no matter where they work or live, deserve a choice of carriers. While there are a small number of local markets where a rural or regional service provider has achieved significant market share, the Commission has acknowledged that these carriers still require roaming agreements with nationwide facilities-based providers to be competitive and offer mobile wireless services that extend beyond the geographic reach of their networks.

Further, both AT&T and Verizon argue that the Data Roaming Order already provides a remedy for a carrier that is unable to obtain data roaming on commercially reasonable terms – the initiation of a complaint proceeding.¹⁰ They both also argue that this is a T-Mobile problem with AT&T. This argument belies the vast industry support for a grant of the T-Mobile Petition. The record in this proceeding demonstrates that the inability of carriers to obtain data roaming on commercially reasonable terms and conditions is a broad, industry-wide problem. In addition, AT&T and Verizon ignore the fact that the Commission specifically contemplated this type of request in the Data Roaming Order, inviting a petition for a declaratory ruling “to resolve any disputes arising out of the data roaming rule.”¹¹ The Commission also emphasized that it “intend[s] to closely monitor further development of the commercial mobile broadband data marketplace and stand[s] ready to take additional action if necessary to help ensure that [data-roaming-related] goals . . . are achieved.”¹²

The record in this proceeding demonstrates that the market for data roaming is broken, and that the Commission should use its specifically-contemplated mechanism to provide clarity surrounding the commercial reasonableness standard. A clarification would allow carriers to make informed decisions during negotiations, as well as more informed decisions about whether to file a complaint – by setting forth the rules of the game on a going forward basis. The T-Mobile Petition Supporters are hopeful that granting the clarification sought by the T-Mobile Petition would actually diminish the need for complaints and FCC intervention, as carriers would have the guidance they need to reach commercially

¹⁰ AT&T *Ex Parte* at 3; Verizon *Ex Parte* at 2.

¹¹ Data Roaming Order at para. 75.

¹² *Id.* at para. 27, 56. Being forced to use the complaint process for every negotiation would be especially burdensome on small, rural carriers, and the delays inherent in the formal complaint process would put such carriers at a significant competitive risk that could hinder the launch of competitive services.

reasonable agreements in a functioning marketplace, rather than having to resort to costly litigation.¹³ We ask that the FCC add T-Mobile's proposed benchmarks to the non-exhaustive list of factors in the Data Roaming Order to help determine whether carriers are offering commercially reasonable data roaming terms, which includes prices.¹⁴

The T-Mobile Petition Supporters noted that it is critical that the Commission act swiftly, as carriers are beginning, as well as already in the midst of, LTE roaming negotiations now. Having access to nationwide LTE roaming is critical for carriers to provide competitive services to consumers. The T-Mobile Petition Supporters thus urge the Commission to promptly grant the relief asked for in the T-Mobile Petition.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

Sincerely,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
General Counsel, Competitive Carriers Association

cc: Roger Sherman
Garnet Hanley
Michael Janson
Jim Schlichting
Gloria Sheu
Joel Taubenblatt
Catherine Matraves
Brenda Boykin

¹³ Despite contentions that "the data roaming market is working," The T-Mobile Petition Supporters note that data roaming complaints against both AT&T and Verizon are currently pending. *See AT&T Ex Parte* at 3; *Worldcall Interconnect, Inc. v. AT&T Mobility LLC*, File No. EB-14-MD-011; *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, File No. EB-13-MD-006.

¹⁴ Data Roaming Order at para. 86.